Public Prosecutor v Mohd Azmi bin Ja'afar

HIGH COURT (MUAR) — CRIMINAL HEARING NO 45–17 OF 2002
JEFFREY TAN J
15 NOVEMBER 2002

Criminal Procedure *— Sentencing — Mitigating factors — Accused saved the time of the court and others involved — Accused a first offender — Accused's parents were elderly — Whether court should take into account mitigating factors*

The accused was charged under s 6 of the Dangerous Drugs Act 1952, punishable by s 39A(2) of the Act. The accused pleaded guilty after the charge was read out to him and admitted certain facts after the statement of the facts of the case was tendered and read out to him. Being satisfied that the accused fully understood the nature and consequences of his plea, as well as having admitted the charge against him, the court accepted the plea of guilt and recorded a conviction. In mitigation, counsel for the accused stated that the accused had saved the time of the court and of the others involved in the case, the accused was a first offender and that the accused's parents were elderly. The learned deputy public prosecutor underlined the seriousness of the offence and the public interest and asked for an appropriate but deterrent sentence.

Held:

It is definitely not in the public interest to be lenient and merciful in the present case. The accused may be a first offender. The accused may have saved much judicial time. Yet due weight must be given to the fact that the accused had committed a most serious offence. And in the opinion of the court, the right and proper sentence was imprisonment for a term of eight years with effect from the date of arrest and ten strokes of the rotan (see p 192E).

[Bahasa Malaysia summary

Tertuduh telah dituduh di bawah s 6 Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah s 39A(2) Akta tersebut. Tertuduh telah mengaku salah setelah pertuduhan tersebut dibaca kepada beliau dan telah mengaku kepada fakta-fakta setelah pernyataan fakta kes dikemukakan dan dibaca kepada beliau. Setelah mahkamah berpuas hati bahawa tertuduh telah memahami sifat dan akibat pengakuan bersalah beliau dan tertuduh telah mengaku kepada pertuduhan terhadap beliau, mahkamah telah menerima akuan bersalah dan merekodkan sabitan terhadap tertuduh. Di dalam rayuan peringanan hukuman, peguam tertuduh berkata bahawa tertuduh telah menjimatkan masa mahkamah dan pihak lain yang terlibat di dalam kes, tertuduh merupakan pesalah kali pertama dan bahawa ibubapa tertuduh adalah orang tua. Timbalan pendakwa raya telah menekankan keseriusan kesalahan tersebut dan kepentingan awam

dan telah memohon hukuman bersesuaian tetapi dalam bentuk pencegahan. A

Diputuskan:

Ia bukanlah untuk kepentingan awam bagi bersikap murah hati atau menunjukkan belas kasihan di dalam kes semasa. Tertuduh mungkin merupakan pesalah kali pertama. Tertuduh mungkin telah menjimatkan masa mahkamah. Tetapi pertimbangan sewajarnya mesti diberi kepada fakta bahawa tertuduh telah melakukan kesalahan yang sangat serius. Mahkamah berpendapat bahawa hukuman yang sesuai dan berpatutan adalah hukuman penjara selama lapan tahun bermula daripada tarikh penangkapan dan sepuluh kali sebatan rotan (lihat ms 192E).] B C

Notes

For cases on mitigating factors, see 5 *Mallal's Digest* (4th Ed, 2001 Reissue), para 3607. D

Cases referred to

Joginder Singh v Public Prosecutor [1984] 2 MLJ 133 (refd)
Lee Peng Kong v PP [1986] 2 CLJ 139 (refd)
Lee Yoke Choong v PP [1964] MLJ 138 (refd) E
Low Oi Lin v Rex [1949] MLJ 210 (refd)
Mohamed Jusoh bin Abdullah and another v PP [1947] MLJ 130 (refd)
PP v Jafa bin Daud [1981] 1 MLJ 315 (refd)
PP v Khairuddin [1982] 1 MLJ 331 (refd)
PP v Mohd Nooh bin Yusof & Ors 5 Mallal's Digest (4th Ed, 1997 Revised) para 2918 (refd) F
PR v Adam bin Mohamad 5 Mallal's Digest (4th Ed 1997 Revised) para 2908 (refd)
R v Kenneth John Ball (1951) 35 Cr App R 164 (refd)
Reg v Murukaiyan Rasoo [1957] MLJ 26 (refd)
Reg v WN Hammar [1958] MLJ 4 (refd)
Yap Teng Chai v PP [1959] MLJ 205 (refd) G

Haslinda bte Abu Bakar (Attorney-General's Chambers) for the Public Prosecutor.

Mohd Faizal bin Ahmad (*Hazelin & Associates*) for the accused.

Jeffrey Tan J: After the alternative charge (P3) was read and explained to him, the accused pleaded guilty to the following offence: H

Bahawa kamu pada 22 Disember 2000, jam lebih kurang 11 pagi, di rumah No 49A, JSA 3 KN, Jalan Sulaiman, dalam Daerah Muar, di dalam Negeri Johor bukan seorang yang diberi kuasa atau disifatkan sebagai seorang yang diberi kuasa di bawah Akta Dadah Berbahaya 1952, telah didapati memiliki dadah berbahaya iaitu 330.9g cannabis dan dengan itu kamu telah melakukan satu kesalahan di bawah s 6 Akta Berbahaya 1952 dan boleh dihukum di bawah s 39A(2) Akta yang sama. I

A And after the statement of facts of the case (P4) that the learned Deputy Public Prosecutor, Haslinda bte Abu Bakar ('the DPP'), tendered was read and explained to him, the accused admitted the following: (a) at about 11am on 22 December 2000, the accused admitted a police search party led by Chief Inspector Mohd Basri bin Omar into house No 49A ISA 3KN, Jalan Sulaiman, Muar, (b) in the presence of the accused the police party B searched the house, (c) from the room occupied solely by the accused, the police discovered a black bag containing three compressed blocks of a plant material suspected to be cannabis, and many other assorted plastic bags containing a plant material also suspected to be cannabis, (d) the accused was arrested, (e) the plant material was analyzed by a government chemist, (f) the plant material was found to contain 330.9g of cannabis, and (g) the C plant material belonged to the accused.

Pertinent to the facts of the case, the learned DPP also tendered a police report (P5), a chemist report (P6), five photographs of the scene (P8[1–8]), a black bag (P10), a bag of cannabis (P13 and P13S), and four packages of cannabis (P14S).

D Being satisfied that the accused fully understood the nature and consequences of his plea, and as well admitted without any qualification, the alleged charge against him, and that the alleged offence had been disclosed, the court accepted the plea of guilt and recorded a conviction.

In mitigation, En Mohd Faizal bin Ahmad said that the accused had E pleaded guilty and thereby saved the time of the court and of the others involved in the case. Encik Faizal further said that the accused is a first offender, and that the parents of the accused are elderly.

The learned DPP underlined however the seriousness of the offence and the public interest, and asked for an appropriate but deterrent sentence F to be passed.

'... in deciding the appropriate sentence ... the first and foremost consideration is the public interest' (*R v Kenneth John Ball* (1951) 35 Cr App R 164; see also *Reg v Murukaiyan Rasoo* [1957] MLJ 26). The court shall pass sentence according to law. 'A "sentence according to law" means that the sentence must not only be within the ambit of the punishable G section, but it must also be assessed and passed in accordance with established judicial principles' (*Public Prosecutor v Jafa bin Daud* [1981] 1 MLJ 315 at p 316, per Mohamed Azmi J, as he then was). 'The first and foremost consideration of punishment is the public interest. [Because] [t]he object of punishing crime is ... also to deter others' (*Yap Teng Chai v Public* H *Prosecutor* [1959] MLJ 205 at p 206; see also *Reg v WN Hammar* [1958] MLJ 4).

In assessing sentence, all the circumstances of the offence should be considered (*Low Oi Lin v Rex* [1949] MLJ 210). ' "The court, in fixing the punishment for any particular crime, will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of I deliberation shown by the offender, the provocation which he received, if the crime is one of violence, the antecedents of the prisoner up to the time of the sentence, his age and character" ' (*Mohamed Jusoh bin Abdullah &*

Anor v Public Prosecutor [1947] MLJ 130 citing *Halsbury's Laws of England* (Hailsham Ed) Vol 9, para 365). 'The courts are duty bound to consider all these matters before deciding upon a suitable sentence' (*Joginder Singh v Public Prosecutor* [1984] 2 MLJ 133 at p 140, per Ajaib Singh J as he then was). The sentence must be one appropriate to the gravity of the offence (*Lee Yoke Choong v Public Prosecutor* [1964] MLJ 138). The sentences should reflect the seriousness of the offence (*Public Prosecutor v Khairuddin* [1982] 1 MLJ 331).

Mitigating factors are not to be disregarded, even if the offence calls for a deterrent sentence (*Lee Peng Kong v Public Prosecutor* [1986] 2 CLJ 139. That is not to say that 'the circumstances of the individual offender are more important than the protection of innocent members of the community from injury to their persons, or from risk even to their lives' (*R v Murukaiyan Rasoo*. Public interest must not be relegated to the background. 'The correct approach is to strike a balance, as far as possible, between the interests of the public and the interests of the accused' (*Public Prosecutor v Loo Choon Fatt* [1976] 2 MLJ 256 at p 258, per Hashim Yeop A Sani J, as he then was; see also *Pendakwa Raya v Adam bin Mohamad* 5 Mallal's Digest (4th Ed, 1997 Revised) para 2908 and *Public Prosecutor v Mohd Nooh bin Yusof & Ors* 5 Mallal's Digest (4th Ed, 1997 Revised) para 2918). '... a court has the discretion to be lenient and merciful provided there are extenuating circumstances and it is in the public interest to do so' (*Public Prosecutor v Khairuddin*).

But it is definitely not in the public interest to be lenient and merciful in the present case. The accused may be a first offender. The accused may have saved much judicial time. Yet due weight must be given to the fact that the accused had committed a most serious offence. And in the opinion of the court, the right and proper sentence is imprisonment for a term of eight years with effect from the date of arrest and ten strokes of the rotan.

Order accordingly.

Reported by Chew Phye Ken